

MINUTES
NATURAL RESOURCES INTERIM COMMITTEE
July 31, 2009
9:30 a.m. to 4:00 p.m.
Room 204, Capitol Annex
Boise, Idaho

Cochairman Senator Gary Schroeder called the meeting to order at 9:30 a.m. Members present were: **Cochairman Representative Dell Raybould**, Senators Charles Coiner, Jeff Siddoway, Lee Heinrich, Kate Kelly substituting for Clint Stennett; Representatives Bert Stevenson, Mike Moyle, Wendy Jacquet substituting for Donna Pence; and ad hoc members Senator Steven Bair; and Representatives JoAn Wood and Jim Patrick. Senator Dean Cameron and Representatives Scott Bedke and Jim Clark were absent and excused. Staff members present were Katharine Gerrity, Ray Houston and Jackie Gunn.

Others present were: Representative Sue Chew, District 17; Mike Roach, Office of U.S. Senator Risch; retired Senator Laird Noh, Working Lands Coalition; Emily Anderson, Idaho Office of the Governor; Serena Carlson and Kennon McClintock, Intermountain Forest Association; Zach Harge and Jerry Deckard, Capitol West/IDADA; Benjamin Davenport, Risch Pisca; Martin Bilbao, Connolly & Smyser; David Groeschl and Kathy Opp, Idaho Department of Lands; Bob McLaughlin, Phil Rassier and Chris Bromley, Idaho Department of Water Resources; Clive Strong, Attorney General's Office, Natural Resources Division; Kent Lauer, Idaho Farm Bureau; J. Kent Foster and Wayne Newbill, Idaho Association of Soil Conservation Districts; Brian Oakey, Idaho State Department of Agriculture; Peter Anderson and Aaron Kraft, Trout Unlimited; Courtney Washburn, Idaho Conservation League; Beth Markley, Idaho Council on Industry and Environment; Brenda Tominaga, Idaho Ground Water Association/Idaho Irrigation Pumpers Association; Colby Cameron, Sullivan and Reberger; Dennis Murphy, Idaho Working Lands; Tim Breuer, Land Trust of the Treasure Valley; Wally Butler, Idaho Farm Bureau Federation; Kristin Troy, Lemhi Regional Land Trust; Bas Hargrove, The Nature Conservancy; Sharon Kiefer and Gregg Servheen, Idaho Department of Fish and Game; Emma Atchley, Teton Regional Land Trust; Mike Edmondson, Office of Species Conservation; Sharon Hubler, Idaho Foundation for Parks and Lands; Jeff Burwell, Natural Resources Conservation Service; Pat Barclay, Idaho Council on Industry and the Environment; and Shelly M. Davis, Barker, Rosholt & Simpson.

NOTE: All copies of presentations, reference materials, and handouts are on file at the Legislative Services Office.

Cochairman Schroeder called for a silent roll call and requested a motion for the approval of the minutes of the last meeting. **Representative Stevenson moved to accept the minutes as written, Senator Siddoway seconded** the motion. The motion carried by unanimous voice vote.

Cochairman Raybould reported that the Comprehensive Aquifer Management Plan (CAMP) does not have a proposal at this time. Another Natural Resources Interim Committee meeting will be scheduled as soon as the proposal reaches the committee leadership.

Cochairman Schroeder introduced **Mr. Chris Bromley**, Idaho Deputy Attorney General, Natural Resources Division. **Mr. Bromley** explained that his views are his own and do not necessarily represent the opinion of the Attorney General or the Department of Water Resources. He presented an overview of current conjunctive management cases, speaking in detail regarding the three major delivery calls since 2005, which were calls filed by senior water users against junior ground water users that pumped from the Eastern Snake Plain Aquifer. **Mr. Bromley** highlighted the three delivery calls: A&B Irrigation District (ground water to ground water); Surface Water Coalition (surface water to ground water); and Thousand Springs (Blue Lakes/Clear Springs – springs to ground water).

Mr. Bromley informed the committee that each call proceeded under the Department's Conjunctive Management Rules, which provide for the integration of ground water and surface water priorities into one system of administration.

Regarding the Thousand Springs call, **Senator Coiner** noted that springs are considered surface water and so that call is actually surface to ground water. **Mr. Bromley** agreed.

In regard to the A & B call, the hearing was held in December, 2008 and the recommended order, in which no injury was found, was issued on March 27, 2009. The Director's final order, accepting all major findings of the hearing officer, was issued in June of 2009 and A & B has petitioned for reconsideration.

In regard to the Surface Water Coalition call, Judge Melanson issued an Order on Petition for Judicial Review on July 24, 2009. **Mr. Bromley** noted that the judge determined the Director abused his discretion in adopting a "wait and see" approach regarding the determination of material injury to carryover storage because he did not require any protection to assure senior right holders that junior ground water users could secure replacement water. According to **Mr. Bromley**, the judge determined that this resulted in the risk of shortage being impermissibly borne by the senior.

Cochairman Raybould asked, in a circumstance where a petitioner has placed water in a rental pool and then asserts he did not have adequate carryover, whether the amount placed in the rental pool is deducted from his required carryover amount. **Mr. Bromley** explained that the answer depended upon the use of the water, whether it was to be used for irrigation or some other use, such as flow augmentation.

Mr. Bromley continued addressing Judge Melanson's order which also found that the Director abused his discretion by categorically stating that he would not curtail junior

ground water users to provide for more than one year of reasonable carryover shortfall. According to the order, the Director, in the exercise of his discretion, can significantly limit or even reject carryover for multiple years based on the specific facts and circumstances of a particular delivery call.

Mr. Bromley continued and summarized additional holdings in Judge Melanson's order. The court found that the Director properly combined the Coalition's natural flow and storage water rights into one total water supply for the purposes of determining material injury and properly exercised his discretion in utilizing a minimum full supply or reasonable in-season demand analysis. According to **Mr. Bromley**, the court also found that the Director's use of the ESPA Model and 10% trim line was supported by the evidence, but that the Director abused his discretion by ordering replacement water plans in lieu of following the procedures set forth in the rules for mitigation plans. **Mr. Bromley** stated that the judge remanded the case for further proceedings consistent with his decision.

Senator Coiner asked **Mr. Bromley** to touch on administrative timeliness. **Mr. Bromley** responded that the judge indicated there was not timely administration and that, moving forward, the Department would try to be as timely as possible.

Mr. Bromley informed the committee that there was also a petition for judicial review in regard to the Thousand Springs call, with Judge Melanson issuing his order on June 19, 2009. According to **Mr. Bromley**, the court determined that the Director's reliance on seasonal variation in spring flows in determining material injury was not contrary to law, that use of the Model and 10% trim line was supported by the evidence, that the Director's percentage apportionment was also supported by the evidence and that the Director did not err in his application of full economic development or public interest analysis.

Mr. Bromley stated that the case was remanded so that the Director could apply the appropriate burdens of proof and evidentiary standards when considering seasonal variation as part of a material injury determination. **Mr. Bromley** noted that the court also found that the Director abused his discretion and exceeded his authority by ordering replacement water and approving mitigation plans without a hearing, and by failing to order curtailment after finding the mitigation plans inadequate, but determined that there is no practical remedy at this point in the proceedings. In all other respects, the Director's decision was affirmed.

Cochairman Raybould asked **Mr. Bromley** if any of the judge's orders related to water quality. **Mr. Bromley** recounted that the judge did not address water quality.

Mr. Bromley next addressed the Snake River Farm Curtailment Order. After he summarized the status of the impacts of the curtailment, **Cochairman Raybould** inquired if there are any commercial, industrial or municipal wells junior to 1981 that are impacted by this order. **Mr. Bromley** responded affirmatively, but explained that some cities have multiple water rights with some wells having more senior priority dates which

the cities may use. He continued to explain that most people who have junior rights also have more senior rights, as many of the irrigation rights within a well are stacked. He went on to say that although there are complexities in working with ground water rights, the Director is committed to enforcing the terms of the order.

Mr. Bromley noted that the Department had been in communication with Clear Springs and the ground water users to determine what mitigation would be in place for the irrigation season. The ground water users had proposed continued conversions to surface water and participation in the CREP program. He noted that they also proposed that the Director order Clear Springs to accept money and replacement fish in lieu of water. **Mr. Bromley** said that the Director would not take that action. According to **Mr. Bromley**, the ground water users then came up with another proposal which entailed the construction of a pipeline to deliver water to Snake River Farms raceways. The Director approved that as a replacement water plan. In the meantime, an agreement was reached between the ground water users and Clear Springs where the pipeline proposal would be stayed, conversions would occur and CREP participation would take place. An order was entered to that effect for the 2009/2010 irrigation season. **Mr. Bromley** stated that less than half of the acres that were to be converted actually were. The deficit was run in the Model and the priority date for curtailment was determined. That order went into effect today.

Senator Siddoway, referring to the portion of the acres not in compliance with the order, asked why those acres fell out. He stated that he understood that there would be an enhanced effort to enforce the ruling and asked **Mr. Bromley** to clarify the penalties. **Mr. Bromley** responded, explaining that his understanding is that, historically, ground water districts paid conversion charges directly to Northside Canal Company and advised them what acres would get conversion water. This year, that responsibility shifted to the individual right holder to pay conversion charges to Northside and to ask Northside to deliver to them. **Mr. Bromley** also commented that the Idaho Code provides for compliance hearings.

Senator Siddoway continued on this line, asking if the individual does not pay the conveyance costs, is he then charged with noncompliance. **Mr. Bromley** stated that the difficulty exists where there may not be an overlap and he believed this to be a civil litigation question. **Mr. Bromley**, in response to a question of **Representative Wood**, reiterated that there may be a litigation component and that civil questions are not in the purview of the Department. He said that the Department can enforce curtailment, but he was not certain that the Department's authority extended to users not taking the conversion water. **Representative Wood** voiced her concern that the decision would come after the fact. **Mr. Bromley** said that the Department is responding as timely as possible and that the focus is "how do you provide relief to the senior water user?"

Representative Patrick asked whether the source of the conversion water is the water bank. **Mr. Bromley** identified the source as stored water in the Snake River. It is water that has been rented by the districts and small amounts may come from the water bank itself but that the vast majority is provided through private leases. **Representative**

Patrick asked whether using meters has been considered as a method to restrict flow. **Mr. Bromley** indicated that some wells do have meters on them. He also discussed power consumption tracking. **Representative Patrick** commented on the potential delay in the reporting if relying on power consumption use.

Senator Coiner stated that part of the confusion results from discerning who you are dealing with in the ground water world. He asked **Mr. Bromley** to identify the responsible party. **Mr. Bromley** detailed how Idaho ground water appropriators are represented by a law firm and that the Department works with that law firm. **Senator Coiner** continued, asking **Mr. Bromley** whether responsibility goes back to the individual water rights holder, or to the water district, or to the greater organization. **Mr. Bromley** responded that the districts represent the individuals.

Representative Stevenson commented that in most of the conversions done in 2005, contracts were not signed by individuals. But, in the past year, they have had signed contracts. **Representative Stevenson** emphasized that the issue is fragile. It is more fragile than ever because membership in the ground water district is voluntary. He went on to state that we run the risk of an implosion within these ground water districts.

Senator Coiner asked for confirmation that dairies have a mitigation plan so that the dairies themselves are safe. **Mr. Bromley** stated that, to the extent they are participating in the dairy operation, the dairymen do have a mitigation plan in place. **Senator Coiner** clarified his question, distinguishing the dairy operation from the farming operation on a dairy farm. **Mr. Bromley** agreed that the irrigation water on the farming operation might be at risk.

Representative Wood asked if the judge might determine that the Director exceeded his authority in following the determination of these groups. **Mr. Bromley** indicated that there is an agreement in place for 2009 and 2010. The senior users agreed to forego less than the full quantity for two years. In **Mr. Bromley's** opinion, there may be a deficit to make up that we have to look at. The Director will consider all options. The districts may approach the Director with an alternative curtailment plan.

Cochairman Schroeder asked **Mr. Bromley** to confirm the number of acres impacted by the curtailment. In response, **Mr. Bromley** indicated 8,889 acres, but mentioned that the staff is currently out performing site investigations. **Cochairman Schroeder** asked about the possibility of litigation precipitated by curtailment. **Mr. Bromley** responded that there could be restraining orders put in place. **Cochairman Schroeder** then asked **Mr. Bromley** to update the committee as soon as possible with the actual number of acres impacted. **Mr. Bromley** said that that information would be made available when determined.

Cochairman Raybould introduced **Mr. Ron Kay**, Range Program Manager, Department of Agriculture, to address federal legislation, specifically **House Resolution 1018, *Restore Our American Mustangs Act*** and his interpretation of the bill's potential impact on public land and the uses of public lands in Idaho. **Mr. Kay** mentioned the challenges

of managing wild horses nationally under existing law. **Mr. Kay** reviewed Section 5 of the *Wild Free-Roaming Horses and Burros Act*, as amended in **HR 1018**. Section 5 enunciates ten requirements for the Secretary of Agriculture. In brief, requirements are: (1) ensure that acreage available for wild and free-roaming horses and burros is at least equal to the acreage where they were found in 1971; (2) update the inventory of such horses and burros annually; (3) take specified action to manage such horses and burros and maintain a thriving natural ecological balance on these lands; (4) identify new rangeland or exclusive use areas and arrange for supervised protection on private lands; (5) report through committee on the effects of new ranges on specified groups, including native wildlife and threatened species; (6) research, develop and implement safe fertility control methods; (7) exhaust all practicable options of maintaining a thriving natural ecological balance on the range before removing horses and burros; (8) take specified action to promote the adoption program; (9) temporarily remove horses or burros from the range if their health/safety is threatened; and (10) remove horses and burros determined a threat to native plant or wildlife species.

Mr. Kay remarked that Idaho has five wild horse areas with a total of five to six hundred horses. He commented on requirement (2), indicating that updating the inventory annually is a very cumbersome process. He continued that fulfilling requirement (3) is a challenge, as the term “ecological balance” is subjective. He interpreted this as prioritizing horses and burros to be the most important. He remarked that other wildlife populations would shrink due to competition. Complying with requirement (4), to create “exclusive use areas,” would negatively impact other wildlife. **Mr. Kay** believed that fulfilling requirement (7), “to exhaust all practical options,” makes horses and burros priority number one while complying with requirement (10), “remove horses and burros,” gives huge authority to be restrictive on what we can do with horses.

Cochairman Schroeder asked **Mr. Kay** to define the Secretary’s authority to destroy horses, and if his authority in this area was revoked by the bill, to identify where the extra horses would be placed. **Mr. Kay** responded that the act opens up other land by authority of law. **Cochairman Schroeder** followed up asking if we weren’t just delaying decisions on horse management to the future. **Mr. Kay** agreed with the Cochairman. **Cochairman Raybould** pointed to inconsistency, by the use of the terms “revoked” and later “insured.” **Mr. Kay** emphasized that the law would make it harder to adopt a horse.

Senator Siddoway requested the status of the bill. **Mr. Kay** stated that it had passed the House and moved on to the Senate. **Senator Siddoway** followed up, asking for the annual expenditure on the wild horse program and if that total was proportional or exponential to the horse population growth. **Senator Siddoway** asked **Mr. Kay** to make that information available to the committee, when possible.

Representative Patrick voiced concern regarding the requirement that mandated supervised protection on private lands. **Mr. Kay** stated that, historically, the Bureau of Land Management (BLM) removed horses on private land and that this act may be an attempt to override that activity. **Cochairman Schroeder** requested that **Mr. Kay** provide information on projected horse expansion.

Representative Jacquet asked who sponsored the bill. Additionally, she asked **Mr. Kay** to provide a breakdown of costs for the bill. **Senator Coiner** identified the bill sponsor as Congressman Rahall from West Virginia. **Cochairman Schroeder** remarked that, given the expenses involved, interest in adopting horses has declined. **Cochairman Schroeder** thanked **Mr. Kay** and remarked that this topic would be discussed in the next legislative session.

Cochairman Raybould welcomed retired **Senator Laird Noh**, a participant in the Working Lands Coalition. **Senator Noh** thanked **Representative Stevenson** and **Representative Wills** for their work on **House Resolution 18**. He addressed the committee, introducing the series of presentations designed to update the committee on the Idaho Working Lands Coalition Program. He stated that he hoped the presenters, each a specialist in their respective field, would provide the necessary overview to encourage legislative conversation, questions and suggestions on how to maintain our working ranches, farms and forests in the state of Idaho. He stated that the issues that the Coalition faces are very complex and that today's meeting would provide the opportunity to lay out the problems and present some potential solutions. He commented that it is helpful hearing from accountants, attorneys and state agents, as well as landowners, who have been through this process and that they are seeking the advice and counsel of the committee.

Dennis Murphy, Spatial Interest LLC, a private consulting business, was introduced by **Senator Noh**. **Mr. Murphy** mentioned that he was supplying examples and illustrating what some states have done, but he was not advocating a particular position for the committee. During his PowerPoint presentation *Idaho's Private Forests, Ranches and Farms*, **Mr. Murphy** noted the increase in Idaho's population between the years 1990 and 2008 (500,000) and the projected increase between the years 2008 and 2030 (500,000). He pointed to the *Forests on the Edge* land use conversion study, recently completed by the U.S. Forest Service. He discussed the relevancy of the survey as it related to the conversion of private lands adjacent to BLM land. He next reviewed a *Strategic Ranchland* conversion study completed by the American Farmland Trust which surveyed productive ranchland in seven states in the Rocky Mountain northwest. He pointed out that three Idaho counties ranked in the top 25, out of the 260, surveyed in terms of the potential for development. **Mr. Murphy** also touched upon the conversion study *Farmland on the Edge*, completed by the American Farmland Trust in 2002, which illustrated growth patterns of development of farmland in Idaho.

Mr. Murphy detailed the conversion impact areas: the economic contribution; the demand for support services; the habitat for game and non-game species; the access to public land; the water – rural to urban uses; property tax revenue vs. service costs; and the amenities that attracted growth. He pointed out that if one adds Idaho stock and crop sales, the total is \$5.6 billion dollars per year. **Mr. Murphy** stated, however, that the Idaho Extension Service suggests, that if one looks at all the purchases the businesses are making, the total is more accurately \$20 billion dollars per year. Also, a survey done in 2006 reflects that there are annually \$900 million dollars of wildlife recreation purchases

in Idaho. **Mr. Murphy** continued with a discussion of the cost of community services per dollar revenue by land use. **Representative Moyle** asked **Mr. Murphy** if he knew what drove up the community services costs for Utah. **Mr. Murphy** responded that perhaps it was the increasing costs of police and educational services.

Mr. Murphy next discussed state policy tools common to western states, pointing out that they tend to look at market-based incentives; conservation easements – voluntary agreements; and partial funding by the state with a matching component (external funds). He also provided data related to Idaho market and economic rent averages per acre per year.

Cochairman Raybould asked about the market value of the land if there is a conservation easement, particularly when the production value of the land is increasing. **Mr. Murphy** explained that a conservation easement is a payment to the private land owner for the difference between the productive value and the development value of the land. When the landowner accepts the payment now, he agrees that his land is now based on the productive value, not the development value.

Cochairman Raybould asked what control local authority had in allowing for the depletion in the appraised value of the county land and what input county commissioners in these states have related to easement considerations. **Mr. Murphy** responded that property tax value does not change before or after the easement. He indicated that he did not know of any state where the commissioners have review responsibility over this process. He said, in fact, appraisers are counseled not to pay attention to conservation easements. **Cochairman Raybould** remarked that the easement would have an effect on a farmer's balance sheet with respect to borrowing money to operate on. **Mr. Murphy** agreed, and added that there are also some tax advantages to easements.

Representative Moyle asked **Mr. Murphy** to discuss future impacts of entering into easement agreements. **Mr. Murphy** indicated that many of the Idaho land trusts are working with local and county entities. He added that easements complemented the local comprehensive plan. **Cochairman Schroeder** then related a situation occurring on a hog farm in Chico, California and asked what is to prevent a neighborhood from growing up around the property. **Mr. Murphy** answered that nothing would prevent the property around the farm from growth but that when one landowner decides to have an easement it often initiates the involvement of his neighbors. He closed by touching on examples of funding sources from five western states.

Senator Noh explained that **Mr. Tom McFarland** was unable to attend the meeting and introduced **Ms. Kristin Troy**, Director of the Lemhi Regional Land Trust. **Ms. Troy** indicated that there has been a noticeable demographic shift downward in her area during her lifetime. She explained that the Lemhi Regional Land Trust started with four ranchers as the Salmon River Working Group. They were motivated to come together due to the large and historically prominent properties changing hands. The Working Group became the Lemhi Regional Land Trust in 2005.

She mentioned that their area is a working landscape and that there is a cultural shift occurring. **Ms. Troy** explained that, as a fourth generation farmer, Mr. McFarland has noticed a change in the culture, based on the fragmentation of the land. She stated that he has a strong belief in the importance the role the nonprofits play in helping accomplish conservation, as well as private dollars. She shared that the Trust approached conservation thoughtfully. Speaking on behalf of the group, **Ms. Troy** stated that they love where they live and that the idea of keeping working landscapes intact is very important to them, culturally and economically.

Representative Wood asked **Ms. Troy** what she considered adequate funding and whether they are looking to the county level for tax credit incentives. **Ms. Troy** spoke of the effectiveness and potential of dovetail partners. In terms of adequate funding, she identified gaps in cost share formulas. She suggested that perhaps the state would consider playing a role in supporting leveraging that gap. **Representative Wood** followed up asking for more details. **Ms. Troy** explained that the Trust has supported state tax credits. She added that the Trust is being strategic and careful.

Representative Moyle remarked that the priority should be protecting the lands closer in and that the locals should have more of a say in what goes on. **Ms. Troy** agreed and that she also supported protection of lands farther out. **Representative Moyle** commented that his concern is that **Ms. Troy** prioritize and not simply focus on the outside land. **Representative Woods** related a situation that recently occurred in her district, where a private landowner decided to build an airport and the uproar that followed that decision.

Cochairman Schroeder introduced **Mr. Kennon McClintock**, presently with Forest Capital Partners and a forester for twenty-nine years, most of that time in Idaho. He stated that Forest Capital owns large chunks of land and that in Idaho there are two million acres of private forest land. Half of that land, he said, is in large land portions and half is in small, 5,000 acre or less portions. **Mr. McClintock** said that this base provides for the infrastructure of milling and manufacturing and is the foundation for our industry. He remarked that there are 280,000 acres of conservation easements on these lands, with some held by various agencies. They work closely with the county commissioners and keep them informed. He continued that the working forests support jobs and the economy up north. **Mr. McClintock** stated that the situation is fragile, where any more land lost to development will impact the infrastructure base for our milling. In closing, he detailed an incentive program that has operated in Minnesota for ten years. All Minnesota landowners with 20 acres or more are reimbursed by the state on a dollars per acre basis. In this manner, he said, the state encourages landowners to keep the land as working forest.

Representative Wood asked for details related to the specific problem they face. **Mr. McClintock** referred to the economic threshold, the threat of land sales to developers, as the value is always there to sell. **Cochairman Schroeder** asked for the funding source of the Minnesota program and asked **Mr. McClintock** to discuss public access requirements. **Mr. McClintock** stated that the funding came from the General Fund and that landowners with 1,500 acres or less are not required to provide public access.

Senator Noh introduced **Ms. Emma Atchley**, Board Member of the Teton Regional Land Trust, Eastern Idaho/Fremont County Farm Rancher. **Ms. Atchley** shared her perspectives as relating to the conservation of working lands. She stated that her family appreciates the value of wildlife and working farms. Their family participates in the Land Trust in order to preserve their way of life. She related that developers came into the region and offered partnerships, offering an attractive contract for the sale of their land. Oftentimes though, these agreements evaporated and the farmers were left with no recourse. She suggested that the state support, through assistance in leveraging, the federal funds that are available for conservation. She explained that landowners are willing to donate a portion of their property for easement. And she continued that farmers need economic value to make their farms more efficient. She asked the legislators to consider innovative ways to assist their efforts.

Cochairman Raybould asked **Ms. Atchley** to consider the timing of her state funding request. He suggested holding off a year or two, given the economic situation. **Ms. Atchley** agreed and stated they needed help with long-term solutions. And, she believed the planning had to start sometime.

Representative Wood stated that it seems to her that planning and zoning would have to be a partner in whatever they do because they are the ones that review the plans for growth in their counties. She also inquired about the benefit of a tax credit, in that for some, they would not have the income level for a credit do them any good.

Representative Wood also asked whether it would be on a per acre average or some other formula.. **Ms. Atchley** responded that there is some value to tax credits but that tax credits would not be the full answer. She thought it important that state law relate as closely as possible to the federal law.

Senator Noh introduced **Mr. Tim Breuer**, Director, Land Trust of the Treasure Valley. He described the Working Lands Coalition perspective as one where working farms, ranches and forests and wildlife meet, those are the high priority places they look to conserve. He stated that working land and habitat are overlapped in the Valley and conservation ideas in the urban areas must be pursued and supported. **Mr. Breuer** encouraged the committee not to overlook the value of open spaces close to home. He then discussed the Three Rivers Ranch easement as a successful project. He also addressed the urban/rural dynamic and the real value the Coalition has experienced by bringing together these perspectives, as they recognized the need for an array of tools. He closed by sharing that now is a perfect time to plan for the future. Though a challenging time, he indicated that it is the right time. **Mr. Breuer** stated that the Coalition is interested in working with the committee.

Representative Jacquet asked whether there are examples of ordinances relating to land trusts. **Mr. Breuer** stated that ordinances are tools and that the Coalition hasn't chosen to get involved with that. He agreed with **Representative Jacquet** that land use maps can guide development. **Representative Wood** commented that we labor with a conundrum, where we wish to conserve natural resources yet at the same time we have businesses

dependent on natural resources. She commented that the legislators work to look at the whole picture and that they look forward to working with him to find solutions. **Mr. Breuer** stated that he looked forward to working with the legislators on this.

Senator Noh introduced **Mr. Jeff Burwell**, Natural Resources Conservation Service. He stated that their mission is to provide technical and financial assistance to the 27,000 landowners in Idaho, to help them protect, sustain and conserve their natural resources. He identified the **2008 Farm Bill** as a substantial toolbox to help landowners to do just that. The bill provides \$38 million dollars annually, a substantial portfolio to help landowners conserve natural resources in a sustainable manner. He addressed the land use changes that have occurred in the most recent years. He provided data on land use changes, a resource inventory, reflecting rural land to developed land conversions between 1982 and 2003. He noted significant loss, 278,000 acres of farmland and ranchland during this time period in Idaho.

Mr. Burwell stated that we have a variety of conservation easement programs: the Farmland Protection Program, the Wetlands Reserve Program and the Grassland Reserve Program. All of these programs are voluntary. In Idaho, there are 63 easements comprised of over 12,500 acres, within these programs. **Mr. Burwell** highlighted the strengths of the programs and noted that they provide options and flexibility to landowners. He stated the largest inherent weakness is that the amount of funding varies from year to year. Speaking to the Grassland Reserve Program, **Mr. Burwell** pointed to the funding options available to landowners in this program, which include long-term rental agreements as well as permanent easements. The program also allows partner entities to write, own and enforce easements with a fifty percent match through a cooperative agreement. He stated there are three ways to appraise the value of these easements: a market analysis, a national survey, or use the landowner's offer.

In closing, **Senator Noh** asked the committee members if they had questions. **Representative Jacquet** asked whether the Coalition has looked at the property tax levels with the counties. **Senator Noh** indicated that the Coalition does speak with county commissioners. He shared that this meeting has provided a sense of the concerns and suggested that some of the committee meeting participants have a follow-up meeting, summarizing the ideas and researching the questions generated here and then come back and report to the committee.

Senator Kelly asked whether the land trusts are creatures of statute and asked how they are funded. **Ms. Troy** explained that land trusts are local, 501(c)(3) corporations and not an arm of a regulatory agency. She stated that they are local independent nonprofits, formed because of the intersection, to provide services to ranchers who want to be part of conservation but don't know where to start. Money is raised through individuals, through fundraisers and foundations, like any nonprofit. **Senator Kelly** followed up asking for more detail. **Ms. Troy** explained that land trusts hold conservation easements in trust and that all easements are unique. All conservation easements have one thing in common, development rights are limited. Additionally, the trusts are required to monitor easements annually, to be responsible for stewardship. **Senator Kelly** asked how many land trusts

are in Idaho. **Mr. Breuer** stated approximately 20 land conservation entities, some national, and some local.

Cochairman Schroeder asked whether there are perpetuity issues. **Mr. Breuer** indicated that the land trust is flexible enough to respond to exigencies. **Cochairman Schroeder** asked **Mr. Breuer** to explain the process when personalities get involved with easements. **Mr. Breuer** stated that they try to work through it. **Cochairman Schroeder** commented that he wished to avoid litigation issues.

Representative Stevenson asked how transmission corridors are affected by easements. **Senator Noh** responded that land trusts are a recognized component of the Internal Revenue Code, a legal entity. Easements are attached to the deed to the property and go with the property. **Representative Stevenson** stated that we are trying to locate those corridors without condemnation. **Senator Noh** sees these as relevant questions to look at by the group.

Representative Wood asked **Senator Noh** if he had looked at the possibility of working with **Mr. Burwell**, and if there are any legal impediments. **Senator Noh** stated that the Coalition is trying to narrow its focus to something practical and saleable.

Representative Patrick commented that urban sprawl is causing damage and that we need to consider all our options. He asked whether the Coalition has looked into stronger zoning laws. **Senator Noh** responded that the economy is cutting two ways - the economy has slowed down and there are added pressures on the working farms and they look to easements as a way to fend off the next generation of well-funded developers.

Cochairman Schroeder asked **Senator Noh** to identify the interface in government involvement and the guarantee of public land access. **Senator Noh** recounted that in the past, there was a broad-based decision making group and they prioritized those particular lands so that the state benefit would maximize the public benefit. At the present time, public access hasn't really been addressed as a component of this issue. **Cochairman Schroeder** suggested a telephone conference and that the committee will stay in touch.

Cochairman Schroeder introduced **Sharon Kiefer**, Assistant Director, Idaho Department of Fish and Game. **Ms. Kiefer** addressed the committee regarding the relationship between working lands and wildlife. She stated that fragmentation is an enemy of functioning ecosystems, consistent and effective wildlife/habitat management and Idaho's outdoor recreation heritage. **Ms. Kiefer** answered three questions during her presentation:

Ms. Kiefer highlighted that private lands comprise thirty-seven percent of the state and encompass an even more significant proportion of Idaho's fish and wildlife populations and habitats than the percent of private ownership represents. Continued development and conversion of private working lands into ever smaller parcels jeopardizes the Department's public trust responsibility to preserve, protect, and perpetuate Idaho's fish and wildlife for its citizens.

Ms. Kiefer listed the programs that the Department of Fish and Game oversee that focus on conserving private working lands for benefit of their associated fish and wildlife habitats and recreation, programs such as: Implementation of wildlife habitat improvements under the Farm Bill and the Department's Habitat Improvement Program (HIP); the Access Yes Program; the Mule Deer Initiative (MDI); and Technical Services. She also commented that there are numerous collaborative efforts to sustain Idaho's private working lands using state, federal, and private financial resources and discussed them in detail.

Ms. Kiefer stated four opportunities that would be valuable contributions to a suite of state policy tools. She addressed the opportunities as: reward stewardship; build capacity; capitalize on existing assets; and promote partnerships and collaboration.

Cochairman Schroeder asked **Ms. Kiefer** to provide a list of places that have top priority, so we can get a better understanding of how to proceed. **Ms. Kiefer** agreed to provide a list. **Cochairman Raybould** asked whether there was an education program directed towards respect for private property. **Ms. Kiefer** stated that the Department communicates a strong message about respecting private property, through hunting regulations and the Access Yes Program and they are starting to incorporate new social media as a new way to get this message out.

Cochairman Raybould introduced **Mr. Brian Oakey**, Deputy Director, Idaho State Department of Agriculture. **Mr. Oakey** provided information to the committee on nontraditional/emerging tools for farmland and ranchland preservation efforts. He discussed Idaho's *Right to Farm Law*, identifying it as a basic tool the committee might refer to during his presentation. He then addressed trends in U.S. agriculture and Idaho agriculture. **Mr. Oakey** stated that in Idaho, the number of Idaho farmer's markets doubled in the last three years and that the number of Idaho wineries doubled in the last five years. He cited that in Idaho, eating locally garners more support than eating organic and that there are more specialty items being produced than ever before. Additional trends include an increase in the average years spent on a farm which is currently 20.4, up 1.6 percent from 2002. The average age of Idaho farmers/ranchers is 56.5, up 4.4 percent in a five-year span. **Mr. Oakey** stated this data reflects that young farmers and ranchers are not coming in and taking over. While over 80 percent of Idaho farms and ranches are family operated, recent data collected points to a downward trend.

Looking at the *Right to Farm Law* as a statutory tool available to help preserve working farms and ranches, **Mr. Oakey** presented five hypothetical situations to the committee as a means for discussing whether the rules in place are working and to consider whether changes to the law are necessary. The issue, he stated, is maintaining the profitability of the farm/ranch. **Mr. Oakey** enunciated traditional farmland protection tools and then discussed subsets of protection tools that are emerging. Some of the emerging tools he listed included: smart growth, culture-based incentive planning, differential assessment programs, developing agricultural and forestall districts, farm business succession planning, term easements, green payments, and smart payments.

Addressing the loss of working farms and ranches, **Mr. Oakey** stated that agricultural preservation programs must acknowledge that a farm is more than just land. He continued, remarking that unlike open space preservation, farmland preservation seeks to enhance and maintain an economic activity. **Mr. Oakey** then provided key components for a successful farm and ranch preservation program. These include: maintain the economic viability of agriculture; distribute the costs fairly; and involve all levels of government. **Mr. Oakey** closed by identifying three research studies that detail new and emerging tools.

Cochairman Raybould introduced **Ms. Kathy Opp**, Deputy Director for the Idaho Department of Lands. She identified three national themes for state and private forestry. They are: facilitating the conservation of working forest land, protecting forests from harm, and enhancing public benefits from trees and forests. She stated that forest assets over the past five years provided a steady stream of income, averaging \$68 million dollars a year and contributing \$250 million dollars a year net available to our beneficiaries for distribution over this same time period. **Ms. Opp** indicated her presentation would provide an overview of two incentive programs - the Statewide Assessment and Forest Resources (SAFR) and the Forest Legacy Program (FLP), largely federally funded, although a portion of program easements do include a matching fund component. She then discussed the purposes of the Statewide Assessment of Forest Resources and identified stakeholders, emphasizing their mission to collaborate with key partners and stakeholders to develop the assessment parameters, methodology and response strategy.

Ms. Opp introduced **Mr. David Groeschl**, Assistant Director for Forestry and Fire. He touched on the Statewide Assessment of Forest Resources and the Forest Legacy Program. He emphasized that the Statewide Assessment of Forest Resources is a collaborative effort between agencies and organizations representing state, private, tribal and federal interests. The assessment part is getting close to finishing up its twelve-month process. It identified concerns, data sources, and determined what weighting factor would be used. He explained that spatial analysis provides a composite and allows for a determination of the highest area of concern, so that we can most effectively direct the federal grant funds.

Mr. Groeschl discussed the next step, developing a response/strategy plan. Key parts include: outline strategies for addressing priority landscapes, identify partner and stakeholder involvement, determine the timeline for the project and program implementation, and identify strategies for monitoring outcomes. **Mr. Groeschl** stated that the response/strategy plan is not static, as it will be revised and updated every five years.

Representative Wood asked for more information regarding the response strategy. **Mr. Groeschl** stated that the assessment itself is almost complete and that the next step is to develop the strategy to address the priorities. **Representative Wood** followed up asking for guidelines to the developing of the strategy. **Mr. Groeschl** explained that the

assessment lets us review the cumulative weights. The areas with the highest total value associated with them will be identified and then evaluated.

Mr. Groeschl stated the mission of Idaho's Forest Legacy Program is to protect environmentally important forest areas that are threatened by conversion to nonforest uses. It is a voluntary program where funds are used to purchase conservation easements on private forest lands that might otherwise be developed or lost as working forests. The Idaho Department of Lands holds and enforces the conservation easements and **Mr. Groeschl** stated that the program is designed to help maintain working forests in perpetuity that provides public benefits and assurances. He concluded by pointing out that Idaho has enrolled 57,216 acres of private land since it began participating in the program, which represents a federal expenditure of \$11,865,760.

Ms. Opp next provided an overview of the Idaho Department of Land's Conservation Program. **Ms. Opp** pointed out that the key to providing a sustainable revenue stream is maintaining a good mix of assets and that the assets have a good customer base. For this reason, working farms, ranches and forests are important to Idaho and the trusts. She continued by stating that conservation easements can help as they add value to help landowners, including trust land, compete with alternative uses like development opportunities. She commented that the key is incentives like cash and tax breaks.

In discussing the administration of the Farm and Ranch Conservation Easement Program, **Ms. Opp** highlighted that the Department of Lands possesses experience administering a similar program – Forest Legacy. And she explained that such administration is not without cost, and would remain separate from the singular focus required to administer endowment trust land operations. **Representative Patrick** asked how the funding out of the Department of Lands is structured. **Ms. Opp** explained that the federal grant component allows for an administrative component and no state funds are allocated to date.

Cochairman Schroeder introduced **Mr. Nathan Fisher**, administrator, Office of Species Conservation (OSC). **Mr. Fisher** stated that he and **Mr. Mike Edmondson** would discuss the overall issues dealing with the Endangered Species Act (ESA) and how it affects issues such as the preservation of private land. The challenge that the state faces is that the ESA does not treat private lands like it treats public lands. In fact, they are treated differently in different sections of the act. He continued, explaining that the challenge faced in Idaho is ranching and farming communities will use private, federal and state lands. **Mr. Fisher** stated that a lot of key habitats are actually on private lands and that his office tries to do planning for conservation of species on the whole landscape. He explained the efforts have been challenging. He concluded by commenting on a test case in Weiser with the CCAA that he hopes might be utilized in other settings.

Mr. Fisher introduced **Mr. Mike Edmondson** who detailed the benefits of conservation easements. He focused his discussion on several conservation easement projects. He emphasized that all these easements are voluntary and thought of at the local level, invented by local technical teams and brought to the OSC under different funding

opportunities. Explaining that he serves on two boards, both comprised of agency heads from the Idaho Department of Fish and Game, the Idaho Department of Water Resources, OSC, as well as a representative from the Northwest Power and Conservation Council, that are the funding decision makers of the state in this case.

Mr. Edmondson illustrated how they are using federal funds to leverage private funds and donations to achieve a goal. He went on to highlight the following easement benefits: they ensure permanent habitat protection for anadromous fish on private land, they create water conservation opportunities that improve spawning and rearing habitat, they improve riparian habitat by managing grazing practices within river corridors, and they eliminate fish migration barriers associated with a property's water rights.

Mr. Edmondson discussed the funding sources for the conservation easements within the Pahsimeroi River Watershed and the Lemhi River Watershed. When the conservation easement idea comes to them as a proposal, they ask several questions, including: *What are the conservation outcomes? - What can we do for the species? - Is the easement compatible and sustainable?* He stated that if the criteria are met, they move forward, participating in funding if it meets their goals with the federal regulatory acts that they deal with.

Cochairman Schroeder asked whether the easements he reviewed were perpetual. **Mr. Edmondson** answered that all of the easements he discussed are perpetual. He pointed to the funded conservation easement projects map for the upper Salmon and discussed the strategies for placement of the easements in these areas. For example, he discussed how they work in partnership with irrigators.

Cochairman Schroeder asked for an update on wolf management. **Mr. Fisher** stated the Idaho Department of Fish and Game will set harvest minimum regulations on August 17th in Idaho Falls. **Cochairman Raybould** complimented the agencies and their representatives in attendance for their work and in setting priorities. The committee will review the information presented. He pointed out that many agencies suffered substantial cuts in the past year and indicated that there may be more cuts in 2010. He advised that the time spent planning will be invaluable, so we can be prepared when there are funding opportunities.

Cochairman Schroeder adjourned the meeting at 4:10 p.m.